

Untouchable fundamental law: pros and cons

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The Ukrainian Constitution has met its fifth anniversary in the midst of heated debates about its importance, perfection (or rather, imperfection), success of implementation of its key provisions for rights and liberties of the Ukrainian citizens, and adequacy of Ukrainian realities to constitutional declarations.

The debate over the role and implementation of the Constitution runs within the Ukrainian political class. Most of ordinary Ukrainians are not interested in the passions about the Constitution. As numerous opinion polls have indicated, the majority of Ukrainians never read the Constitution. On the one hand, that can indicate that Ukrainians do not want to know their rights and duties. On the other hand, that can mean they believe, from the Soviet time, that their awareness or ignorance of the law does not make any difference.

The low level of attention of ordinary Ukrainians to the Constitution may be seen as part of the general skepticism about the state and state authorities. Year after year, Ukrainians' confidence in power institutions is reduced. For instance, according to the Institute of Social Research and the Social Monitoring Center, shortly before the Constitution day no significant changes occurred in public opinion about the state authorities. The level of public trust in President Leonid Kuchma in May - December 2000 remained unchanged (32% of the respondents), while the level of trust decreased substantially in March (28%) and June 2001 (23%). The level of trust to the parliament, Verkhovna Rada, was low both in 2000 and the first part of 2001 (about 16-19%). 34% of the respondents trusted the law enforcement authorities, while 59% did not trust them at all and 7% hesitated. The list can be continued, and it suggests a number of state bodies fail to come up with adequate actions to respond to the citizens' needs.

Five years under the new Constitution have proved the existence of major problems of media freedom. Notwithstanding the constitutionally declared right of the freedom of expression and prohibition of censorship, unfree and biased media, the phenomenon of «inner censor» in almost every journalist have become typical of the Ukrainian media. The depth of the problem that culminated in the «tapeagate» and the murder of Georgy Gongadze may illustrate the gap between realities and the declarations. The parliamentary hearing «The 5th anniversary of the Constitution of Ukraine. Rights and liberties of citizens of Ukraine - expectations and reality», held a few days ago, are rather symptomatic in this context. There are many problems in the area of implementation of constitutional rights, «an abyss between what is declared and the reality», as chairman of the parliamentary Committee for Human Rights, National Minorities and International Relations Hennady Udovenko said during the hearing (UNIAN, June 20, 2001). He argued that although the Constitution was created in accordance with European examples, and its fundamental principle is «the state for the people», provisions of the Fundamental Law on human rights, declaring that a human being is the «top value for the state», have been repeatedly violated. Particular anxiety has been caused by the failure to satisfy social and economic rights of citizens, which, according to Udovenko, have not become a priority for the state authorities.

Key concerns in this respect are the dramatically low standards of living, growing crime, and violations of constitutional rights for employment, fair payment, housing, health care, information and freedom of speech. According to the Ministry of Labor and Social Policy of Ukraine, 26.7% of Ukraine's population are poor, and 14.7% are extremely poor. A complex survey of living conditions, conducted by the ministry, showed that the majority of poor families (75%) are those that have children aged under 13. Among the Ukrainian poor, families with children and two adults of working age comprise 47.2%, and families with children and two working adults comprise 18.5%. A substantial part of the poor are senior citizens. 44.5% of the poor are families in which at least one of the members is retired, 41.8% are families in which none of the retired members continues to work, and 9.3% are families in which all members are retired.

According to the parliament's Committee for Social Policy and Labor, in 2000 real salaries decreased by 0.9% compared to the previous year. Its part in the structure of income decreased to the critical low of 47.7%. Having employment stopped being a guarantee of at least minimum well-being. According to official statistics, almost 78% of poor families are those in which at least one of the adults works, and 70% of people who have jobs earn less than the official survival minimum. Real figures of hidden unemployment are far more dramatic.

In this context, one of significant problems is «feminisation» of unemployment and poverty. According to the State Committee for Youth, Sports and Tourism, an official agency dealing with youth and women, among other things, currently about 400 thousand Ukrainian women are jobless. The level of women's salaries is about 73% of the men's. The proportion remains stable despite of the fact that the Constitution declares gender equality.

President Leonid Kuchma also pointed to the violation of the Constitution - focusing on violation of social and economic rights, and the poverty problem. The new government declared it would throw all its forces to respond to the problem and admitted that countering poverty would be impossible without an effective taxation reform, without creation of equal opportunities and removing numerous economic subsidies to selected economic actors.

Noteworthy, besides references to numerous violations of economic and social rights of Ukrainians, the debate about the Constitution includes a number of political dilemmas related to the whole system of organization of power in Ukraine. The political debate in this field related to amending (not amending) the Fundamental Law. For the past five years, treating the Ukrainian Constitution as «untouchable» had played an important role in building relatively stable and predictable rules of the game. Five years ago the new Constitution became a result of a peculiar multi-level political consensus that was achieved between different branches of power of the specific Ukrainian triad: the parliament, the executive branch and the Administration of the President of Ukraine. The 'traditional» third branch of power, the judiciary, for many reasons remained partly dependent on the executive branch (due to the issues of financing and institutional subordination) and, therefore, can hardly be seen as fully independent in the true meaning of this word. The adoption of the Fundamental Law settled a long-standing political crisis and finally divided the branches of power. Nowadays, there are chances that amending the Constitution may disrupt this shaky balance. The very situation of creating precedents technologically and contextually in the time of political crisis may prove to be very dangerous for the stability of the political system, as it might be used by reactionary forces.

Meanwhile, it is worth noting that the course and the language of the debate are based on the constitutional provisions: they appeal to the Constitution as to the fundamental law and, therefore, take into account the provisions that make the amendments possible. The very spirit of the discussion indicates that five years after the adoption of the Constitution were not in vain from this point of view, and the Constitution is being seen as fundamental both ideologically and politically, as the major binding document that has to be taken into account unquestionably in any political calculations and technological schemes devised by various political forces - notwithstanding political preferences and tensions that occur in such discussions.

A noteworthy fact about the current debate about the Constitution is that most of the debate is not limited to amending individual articles but targets making major changes in the very model of organization of the state power.

A key component last year (which gradually lost its importance, however) was the issue of implementation of the results of the April 2000 referendum that should have resulted in creating a bi-cameral parliament and reducing the number of MPs. So far, no clear answer regarding the implementation prospects has been given. Yet, the absence of an answer does not mean no questions have been asked. For instance, during the debate at the recent international symposium «Parliamentarism in Ukraine: Theory and Practice», devoted to the upcoming 10th anniversary of Ukraine's independence and the 5th anniversary of the Constitution, Minister of Justice Suzanna Stanik announced that «ideology of bicameralism of the parliament should be accepted and implemented in the order specified by the law (UNIAN, June 26, 2001) but then added that although the Constitution provides for Ukraine as a unitary state with a single-chamber parliament, it is necessary to take into account the people's volition expressed at the national referendum of April 2000 (when overwhelming majority voted for making the parliament bicameral, reducing the number of MPs and the scope of their

immunity and power). Therefore, it's likely that the process will be continued.

As President Kuchma publicly stated, he believed the referendum results would probably be implemented by the next parliament. Commenting on that semi-forgotten issue in June 2001, he said there was a need to work in a way that to ensure that the new parliament would have the views about the country's future development prospects that would stimulate the would-be MPs to ensure the implementation of the referendum results. During his recent visit to Slovakia and meetings with his Slovak counterpart Leonid Kuchma also made some rather radical comments about organization of the power establishment in Ukraine. If implemented, his ideas will mean major changes to the Ukrainian Constitution. In particular, Leonid Kuchma announced he preferred introduction of a presidential republic in Ukraine. «I believe that at the present stage there must be a presidential form of governance», he said (UNIAN, June 12, 2001), arguing that «the world experience indicates that in times of crisis a country overcomes it provided there is a strong executive branch». In his opinion, «the USA, France do not give up the presidential form of governance and this is not seen as an attack on democracy. Only the President of Ukraine may not dissolve the parliament.» According to the guarantor of the Ukrainian Constitution, he has «fewer powers than presidents of other countries».

The «constitutional discussions» bring radically different scenario. Advocates of transforming Ukraine into a parliamentary republic - the anti-Kuchma National Salvation Forum and the Ukrainian left-wingers - argue that the legislature does not have enough power. A key demand of the National Salvation Forum is transforming Ukraine into a parliamentary republic and abolition of the presidency. The Forum's manifesto, signed in mid-February 2001 by 67 members of the parliament and political activists, announced: «Given the interest of political forces that currently do not belong to the opposition in creation of a coalition government, we propose that they join the legislative initiative for making amendments to the Constitution regarding the establishment of a government by the parliament, introduction of the parliamentary control over the force ministries (including control over staff appointments), provision by the parliament of a mechanism of enacting of adopted legislation and control over its implementation» (Silski Visti, February 15, 2001). Later on, in March 2001, the Verkhovna Rada sent a petition to the Constitutional Court «On Making Changes and Amendments to the Constitution of Ukraine», drafted by Oleksandr Moroz, Serhiy Holovaty, Anatoly Matvienko and several other opposition MPs. The changes, proposed in the document, aimed at transforming Ukraine into a parliamentary-presidential republic. The draft was endorsed by 168 MPs.

Nowadays different forces of the Ukrainian political environment have the opposite views on organization of the system of state power. However, it is unlikely that the extremes will be reflected in the Constitution, and the Fundamental Law will probably remain unchanged.

Meanwhile, it is worth considering draft recommendations of an International Symposium «Parliamentarism in Ukraine: Theory and Practice», held on June 26, 2001 in the Ukrainian parliament. The draft recommendations concerned making amendments to the Constitution which «did not define the representative status of the Verkhovna Rada of Ukraine clearly enough, did not fully regulate its authority in the field of law-making activity. The Fundamental Law did not introduce a relevant mechanism of legal regulation of relations between different branches of power. There are a number of other theoretical and practical issues that need to be addressed successfully in order to reform parliamentary activity as a key direction of Ukraine's state and law-making reform», the draft resolution read. Therefore, the parliament is expected to work more actively to amend the Constitution in order to improve its own (i.e., the parliament's) representative, legislative, control functions and take measures to accelerate development and adoption of laws «On the Verkhovna Rada of Ukraine», «On the Protocol of the Verkhovna Rada of Ukraine», «On Scheduling and Holding National Referenda on People's Initiative», «On the Parliamentary Control and Control Activity of the Verkhovna Rada of Ukraine», «On Laws and Law-making Activity», «On Temporary Investigative Commissions of the Verkhovna Rada of Ukraine» and other bills that determine the legal status of the parliament.

The recommendations can illustrate the need in more that cosmetic improvement of the Fundamental Law and the opinion of the Ukrainian political elite about prospects of amending the Constitution and, hence, creating a precedent.